

WLM

03C0

Attorney's Docket No.: 10638-025001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : William K. Lie et al.
Serial No. : 09/982,720
Filed : October 18, 2001
Title : DOUBLE-FACE VELOUR FABRIC ARTICLES HAVING IMPROVED
DYNAMIC INSULATION PERFORMANCE

Art Unit : Unknown
Examiner : Unknown

Commissioner for Patents
Washington, D.C. 20231

DECLARATION OF FACTS AS TO PROOF OF UNAVAILABILITY OF NON-SIGNING
JOINT INVENTOR, BHUPESH DUA

I, Felicia Siggins, having firsthand knowledge of the facts below, declare that the following statement of facts as to the unavailability of non-signing joint inventor, Bhupesh Dua, are true to the best of my knowledge and belief:

- 1) On or about October 31, 2001, at the direction of Ernst Weglein, General counsel and Clerk for Malden Mills Industries, Inc. ("Malden Mills"), I prepared a letter (Exhibit A), dated October 31, 2001, to Bhupesh Dua, which Mr. Weglein subsequently signed.
- 2) On November 1, I sent the letter to Mr. Dua via U.S. Mail, First Class, in an envelope (Exhibit B) bearing the last known address known to Malden Mills for Mr. Dua. In the envelope, I also enclosed copies of an EMPLOYEE NONCOMPETITION, NONSOLICITATION, NONDISCLOSURE AND ASSIGNMENT OF INVENTIONS AGREEMENT (Exhibit C), which had been previously signed by Mr. Dua, a copy of a Combined Declaration and Power of Attorney (Exhibit D) for Mr. Dua's signature, and an Assignment (Exhibit E) for Mr. Dua's signature.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

January 22, 2002
Date of Deposit
Diane M. Miles
Signature
Diane M. Miles
Typed or Printed Name of Person Signing Certificate

Applicant : William K. Lie et al.
 Serial No. : 09/982,720
 Filed : October 18, 2001
 Page : 2

Attorney's Docket No.: 10638-025001

3) The envelope (Exhibit B), containing all of the above-described contents, was returned to me unopened and bearing a stamp indicating that the U.S. Postal Service was "unable to forward" the envelope to Mr. Dua.

4) After receiving the returned envelope, I confirmed that Malden Mills has no other address for Mr. Dua.

5) After diligent effort, Mr. Dua cannot be reached or found.

Date:

January 21, 2002

Felicia Siggins
 Felicia Siggins

Please direct any correspondence concerning this declaration to:

Timothy A. French
 Registration No. 30,175
 Fish & Richardson P.C.
 225 Franklin Street
 Boston, MA 02110
 Telephone: (
 Facsimile: (202) 783-2331

20375611.doc



Mr. Bhupesh Dua
55 Beechwood Drive
Haverhill, MA 01830

October 31, 2001

Re: Combined Declaration and Power of Attorney
Assignment

Dear Bhupesh:

You may recall that while you were employed by Malden Mills, you were listed as an inventor on a patent application titled:

Double-Face Velour Fabric Articles Having Improved Dynamic Insulation Performance

An additional patent application is now ready for filing. It is a continuation of the above patent and has the same title:

Double-Face Velour Fabric Articles Having Improved Dynamic Insulation Performance

and your name will also appear on this application as one of the inventors.

Please sign the two referenced documents where indicated and return them to me in the stamped, self-addressed envelope that I have enclosed. Please note that your signature on the Assignment must be notarized. If you have any expense in this regard, please include a bill, or respectively, a receipt from the notary so that you may be reimbursed.

Sincerely yours,

MALDEN MILLS INDUSTRIES, INC.

Ernst B. Weglein
General Counsel

EBW/fjs

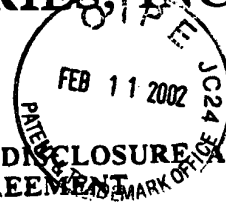
Encl.

N.B. I am enclosing a copy of the Employee Noncompetition, Nonsolicitation, Nondisclosure and Assignment of Inventions Agreement that you executed. Please note, in particular, Section 4, Assignment of Inventions.

MALDEN MILLS INDUSTRIES, INC.

46 STAFFORD STREET
LAWRENCE, MA 01841

EMPLOYEE NONCOMPETITION, NONSOLICITATION, NONDISCLOSURE AND ASSIGNMENT OF INVENTIONS AGREEMENT



The undersigned, BHUPESH DUA, in consideration for and as a condition of my initial or continuing employment by Malden Mills Industries, Inc., a Massachusetts corporation with principal executive offices located at 46 Stafford Street, Lawrence, MA, ("MALDEN"), does hereby agree with Company as follows:

1. **Recital.** MALDEN possesses Confidential Information (as that term is defined in Exhibit A hereto) which is of substantial competitive as well as monetary value to MALDEN. Additional Confidential Information may be created and Developments (as that term is defined in paragraph 4 hereof) made in the course of my employment which may also be of significant competitive and monetary value to MALDEN. Some of such Confidential Information and Developments may be made available to me solely to enable me to perform my duties as an employee of MALDEN. All such Confidential Information and Developments are and shall be the property of MALDEN and MALDEN is entitled to the provisions hereof to assure MALDEN's ownership thereof and the protection thereof against loss by MALDEN.
2. **Best Efforts, Noncompetition and Nonsolicitation Covenants.** During the period of my employment by MALDEN I will devote my best efforts to the business of MALDEN during all such times that I am engaged in any effort for or on behalf of MALDEN. During the period of my employment by MALDEN and during any period that I am retained by MALDEN as a consultant or in any other capacity for which efforts I am compensated, and for a period of one (1) year thereafter I will not engage in any business activity that could interfere with my MALDEN duties (if any) without the prior written consent of (an officer of) MALDEN and I will not, during such period, without the prior written consent of (an officer of) MALDEN, directly or indirectly, alone or as a partner, officer, director, employee or stockholder of any entity, engage in any business enterprise which (i) is in competition with the products being developed, manufactured or sold by MALDEN, (ii) provides goods or services to MALDEN or (iii) is a customer for the products of MALDEN. Further, during the period of my employment by MALDEN, or while I am retained by MALDEN as a consultant or in any other capacity or for so long as I receive any compensation from MALDEN for services rendered to MALDEN and for a period of three (3) years thereafter I agree that I will not, directly or indirectly, alone or as a partner, officer, director, employee or stockholder of any entity, solicit, interfere with or endeavor to entice away any employee of MALDEN or any customer of MALDEN who is such during my engagement or at the time of termination of my engagement (whether voluntary or involuntary), or any prospective employee of MALDEN or any prospective customer of MALDEN who is such at the time of termination of my engagement (whether voluntary or involuntary).
3. **Nondisclosure Covenant.** I will not at any time, whether during or after the termination of my employment, reveal to any person or entity any of the Confidential Information (as that term is defined in Exhibit A hereto), of MALDEN or of any third party which MALDEN is under an obligation to keep confidential, except as may be required in the ordinary course of performing my duties as an employee of MALDEN, and I shall keep secret all Confidential Information entrusted to me and shall not use or attempt to use any such Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss whether directly or indirectly to MALDEN.

Further, I agree that during my employment I shall not make, use or permit to be used any Confidential Information of any nature relating to any matter within the scope of the business of MALDEN or concerning any of its dealings or affairs otherwise than for the benefit of MALDEN. I further agree that I shall not, after the termination of my employment, use or permit to be used any such Confidential Information, it being agreed that all of the Confidential Information shall be and remain the sole and exclusive property of MALDEN and that immediately upon the termination of my employment I shall deliver all of the foregoing, and all copies thereof, to my immediate supervisor or an officer of MALDEN. Anything to the contrary herein notwithstanding, I shall not publish any information described in this Section 3, any information derived therefrom or information regarding Developments (as defined in Section 4 hereof), without the express written permission of MALDEN.

4. **Assignment of Inventions.** If, at any time or times during my employment, I shall (either alone or with others) make, conceive, discover, reduce to practice or become possessed of any invention, modification, discovery, design, development, improvement, process, formula, data, technique, know-how, secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection, herein called "Developments") that results from

tasks assigned to me by MALDEN or results from the use of premises owned, leased or contracted for by MALDEN, such Developments and the benefits thereof shall immediately become the sole and absolute property of MALDEN, and I shall promptly disclose to MALDEN (or any persons designated by it) each such Development and hereby assigns any rights I may have or acquire in the Developments and benefits and/or rights resulting therefrom to MALDEN without compensation and shall communicate, without cost or delay, and without publishing the same all available information relating thereto (with all necessary plans and models) to MALDEN.

Upon disclosure of each Development to MALDEN, during my employment and at any time thereafter, I shall, at the request and cost of MALDEN, sign, execute, make and do all such deeds, documents, acts and things as MALDEN and its duly authorized agents may reasonably require:

- (a) to apply for, obtain and vest in the name of MALDEN alone (unless MALDEN otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and
- (b) to defend any opposition proceeding in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

I hereby irrevocably designate and appoint MALDEN and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by me.

I represent that the Developments identified in the schedule, if any, attached hereto comprise all the unpatented and uncopyrighted Developments which I have made or conceived prior to my employment by MALDEN, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title and purpose of such Developments but not details thereof.

5. **Remedies Upon Breach.** I agree that any breach of this Agreement by me will cause irreparable damage to MALDEN and that in the event of such breach MALDEN shall have, in addition to any and all remedies at law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder.
6. **No Obligation to Continue Employment.** I understand that this Agreement is not an employment contract nor does it create an obligation on MALDEN or any other person or entity to continue my employment for any period, in any capacity or at any compensation level.
7. **Consent and Waiver by Third Parties.** I understand that MALDEN does not desire to acquire from me any trade secrets, know-how or confidential information that I may have acquired from others. Accordingly, I represent and warrant that I am free to divulge to MALDEN, without any obligation to, or violation of any right of others, any and all information, practices and techniques which I will use, describe, demonstrate, divulge or in any other manner make known to MALDEN during the course of my employment. I represent that I am not bound by any agreement or any other existing or previous business relationship which conflicts with or prevents the full performance of my duties and obligations to MALDEN during the course of my employment.
8. **No Waiver.** Any waiver by MALDEN of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.
9. **Severability.** I hereby agree that each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear.
10. **Survival of Obligations.** My obligations under this Agreement shall survive the severance or termination of my employment regardless of the manner of such termination, my death or my resignation, and shall be binding upon my heirs, executors, administrators and legal representatives.
11. **Reasonableness of Provisions.** I recognize and agree that the enforcement of this Agreement is necessary to ensure the preservation, protection and continuity of the business, trade secrets and goodwill of MALDEN. I agree that, due to the confidential nature of MALDEN's business, the restrictions set forth in Sections 2, 3, and 4 of this Agreement are reasonable as to time and scope.

12. **Contest of Provisions.** If you dispute the validity or applicability of Section 2 hereof in connection with your intended or actual employment by, or business activity with, an entity other than MALDEN, then the effective date of Section 2 shall be that date upon which the court, from which no further appeal is possible, enters final judgment in favor of MALDEN, the effective period to be reduced by any time that a restraining order or a temporary injunction is in effect.
13. **Assignment by Malden.** The term "MALDEN" shall include Malden Mill Industries, Inc. and any of its subsidiaries, divisions or affiliates. MALDEN shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns.
14. **Priority of Agreement.** This Agreement supersedes and replaces any other agreement between us related to the same subjects, dated prior to the date hereof.
15. **Governing Law.** The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws applicable to contracts fully made, entered into, and performed within the Commonwealth of Massachusetts.

Executed Under Seal as of the 13 day of June, 1994.

Malden Mills Industries, Inc.
46 Stafford Street
Lawrence, MA 01841.

Bhupesh Dua
Signature of Employee
BHUPESH DUA
Print Name of Employee
1775 ANDOVER ST.
Street Address
TEWKSBURY, MA - 01876
City State Zip Code

By: Anna Bonanno
Title: Ben Mgr.

EXHIBIT A

The term "Confidential Information" shall include, without limitation, whether furnished or made accessible to me by MALDEN or developed in whole or in part by me alone or jointly with MALDEN or others:

- (a) All inventions, discoveries, know-how, techniques, devices, ideas, research, engineering methods, practices, processes, systems, formulae, designs, products, projects, computer programs, improvements and developments which have not been generally available and which were or are conceived or reduced to practice at any time prior to the termination of my employment hereunder, in whole or in part, by any of MALDEN's employees or consultants, at the expense of MALDEN, on the premises of MALDEN, or with MALDEN's equipment; and
- (b) All client or customer lists, trade secrets, or other information pertaining to the financial condition, business affairs or prospects of MALDEN including, without limitation, information relative to customers, suppliers or other parties with which MALDEN has a business relationship; samples; sketches; bulletins; correspondence; company forms and records (including financial statements and product specification sheets); information concerning sources of supply; costs of manufacture and sale and specifications of equipment; whether or not published or unpublished, confidential or protected or susceptible to protection by patent, trademark, copyright or any other form of legal protection and whether or not any attempt has been made to secure such protection; and whether or not in any way related to the subject matter of any work done by me for or at the request of MALDEN.

FEB 11 2002

Docket No.: 10638-025001

Client's Ref. No.:

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled DOUBLE-FACE VELOUR FABRIC ARTICLES HAVING IMPROVED DYNAMIC INSULATION PERFORMANCE, the specification of which:

- ☒ is attached hereto.
☐ was filed on _ as Application Serial No. _ and was amended on _____
☐ was described and claimed in PCT International Application No. _____ filed on _____ and as amended under PCT Article 19 on _____.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information I know to be material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim the benefit under Title 35, United States Code, §119(e)(1) of any United States provisional application(s) listed below:

U.S. Serial No.	Filing Date	Status
-----------------	-------------	--------

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information I know to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

U.S. Serial No.	Filing Date	Status
09/347,825	0 July 2, 1999	Pending
09/883,643	June 18, 2001	Pending

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed:

Country	Application No.	Filing Date	Priority Claimed
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Timothy A. French, Reg. No. 30,175
 David L. Feigenbaum, Reg. No. 30,378

William E. Booth, Esq., Reg. No. 28,933
 John F. Hayden, Reg. No. 37,640

Combined Declaration and Power of Attorney

Page 2 of 3 Pages

Address all telephone calls to TIMOTHY A. FRENCH at telephone number (617) 542-5070.

Address all correspondence to TIMOTHY A. FRENCH at:

FISH & RICHARDSON P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge - that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Full Name of Inventor: MOSHE ROCK

Inventor's Signature: Moshe RockDate: 10/26/01

Residence Address: Andover, MA

Citizenship: United States

Post Office Address: 18 Korinthian Way

Andover, MA 01810

Full Name of Inventor: EDWARD P. DIONNE

Inventor's Signature: Edward P DionneDate: 10/26/01

Residence Address: South Paris, ME

Citizenship: United States

Post Office Address: 56 Western Avenue

South Paris, ME 04281

Full Name of Inventor: BHUPESH DUA

Inventor's Signature: _____

Date: _____

Residence Address: Haverhill, MA

Citizenship: United States

Post Office Address: 55 Beechwood Drive

Haverhill, MA 01832

ASSIGNMENT

For valuable consideration, we, MOSHE ROCK of 18 Korinthian Way, Andover, MA 01810, EDWARD P. DIONNE of 56 Western Avenue, South Paris, ME 04281, BHUPESH DUA of 55 Beechwood Drive, Haverhill, MA 01832, CHARLES HARYSLAK of 5 Ahern Circle, Haverhill, MA 01832, WILLIAM K. LIE of 97 Salem Street, Methuen, MA 01844, DOUGLAS LUMB of 107 Tyler Street, Methuen, MA 01844, hereby assign to:
Malden Mills Industries, Inc., a Massachusetts corporation having a place of business at:

46 Stafford Street
P.O. Box 809
Lawrence, MA 01842; and

its successors and assigns (collectively hereinafter called "the Assignee"), the entire right, title and interest throughout the world in the inventions and improvements which are subject of an application for United States Patent signed by us, entitled DOUBLE-FACE VELOUR FABRIC ARTICLES HAVING IMPROVED DYNAMIC INSULATION PERFORMANCE, filed October 18, 2001, and assigned U.S. Serial Number _____, and we authorize and request the attorneys appointed in said application to hereafter complete this assignment by inserting above the filing date and serial number of said application when known; this assignment including said application, any and all United States and foreign patents, utility models, and design registrations granted for any of said inventions or improvements, and the right to claim priority based on the filing date of said application under the International Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the European Patent Convention, and all other treaties of like purposes; and we authorize the Assignee to apply in all countries in our name or in its own name for patents, utility models, design registrations and like rights of exclusion and for inventors' certificates for said inventions and improvements; and we agree for ourselves and our respective heirs, legal representatives and assigns, without further compensation to perform such lawful acts and to sign such further applications, assignments, Preliminary Statements and other lawful documents as the Assignee may reasonably request to effectuate fully this assignment.

Attorney Docket No.: 10638-025001

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 20_____

BHUPESH DUA L.S.

State of _____ :
: ss.
County of _____ :

Before me this _____ day of _____, 20_____, personally
appeared BHUPESH DUA known to me to be the person whose name is subscribed to the
foregoing Assignment and acknowledged that he executed the same as his free act and deed for
the purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 20_____

BHUPESH DUA L.S.

State of _____ :
: ss.
County of _____ :

Before me this _____ day of _____, 20_____, personally
appeared BHUPESH DUA known to me to be the person whose name is subscribed to the
foregoing Assignment and acknowledged that he executed the same as his free act and deed for
the purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]

IN WITNESS WHEREOF, I hereto set my hand and seal at _____,
this _____ day of _____, 20____

BHUPESH DUA

L.S.

State of _____ :

: ss.

County of _____ :

Before me this _____ day of _____, 20____, personally
appeared BHUPESH DUA known to me to be the person whose name is subscribed to the
foregoing Assignment and acknowledged that he executed the same as his free act and deed for
the purposes therein contained.

Notary Public

My Commission Expires:

[Notary's Seal Here]